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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/720,959

11/24/2003

Terry Lescberg

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5204

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7590

10/26/2006

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EXAMINER

SELF, SHELLEY M

ART UNIT

PAPER NUMBER

3725

DATE MAILED: 10/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/720,959

Applicant(s)

LESEBERG, TERRY

Examiner

Shelley Self

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Amendment*

The amendment filed on August 8, 2006 has been considered but is ineffective to overcome the prior art and an action on the merits follows.

Upon further review the indication of allowable subject matter noted in the previous Office Action is withdrawn and an action on the merits follows.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1-8 and 12-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claim 1, the recitation, "...*being pivotal only in the horizontal direction*" is ambiguous. For example, Examiner notes, a second frame member positioned in a horizontal plane (i.e., x-axis) may pivot about a vertical axis to pivot in the horizontal direction, however the same member may pivot about a horizontal axis, such as to rotate or pivot above and below the 0-point in an x-y coordinate system. Accordingly, Examiner notes, pivoting in a horizontal direction is not synonymous with pivoting about a horizontal axis. Further, Examiner notes the specification does not provide clear support for pivoting in a horizontal direction, and instead supports pivoting about a horizontal axis (figs. 4, 5). Correction is required.

Art Unit: 3725

With regard to claim 3, there is no antecedent basis for the recitations, "*the horizontal direction*" and, "*the converse end of the blade...*" (lines 19, 20, 22). Both the first and second blade members are defined having proximal and distal ends; accordingly, it is unclear what is meant by "the converse end". Clarification is required.

Further regarding claim 3, it is not clear if the recitation, "a means for actuating" (lines 19, 20, 23) refer to "a means for actuating" (line 17). Examiner suggests, --said means for actuating--. Clarification is required.

Also regarding claim 3, line 23, "pivotally connected the means for actuating" is not clear and therefore cannot be clearly understood. Appropriate correction is required

With regard to claim 18, Examiner notes claim 18 to depend from claim 17, which depends from claim 14; with this dependency drawn, it is unclear if "*a hydraulic system*" recited in the claim is the same as the hydraulic system recited in claim 17. Clarification is required.

Applicant should review all of the claims for clarity, definiteness, vagueness and proper/clear antecedent basis.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

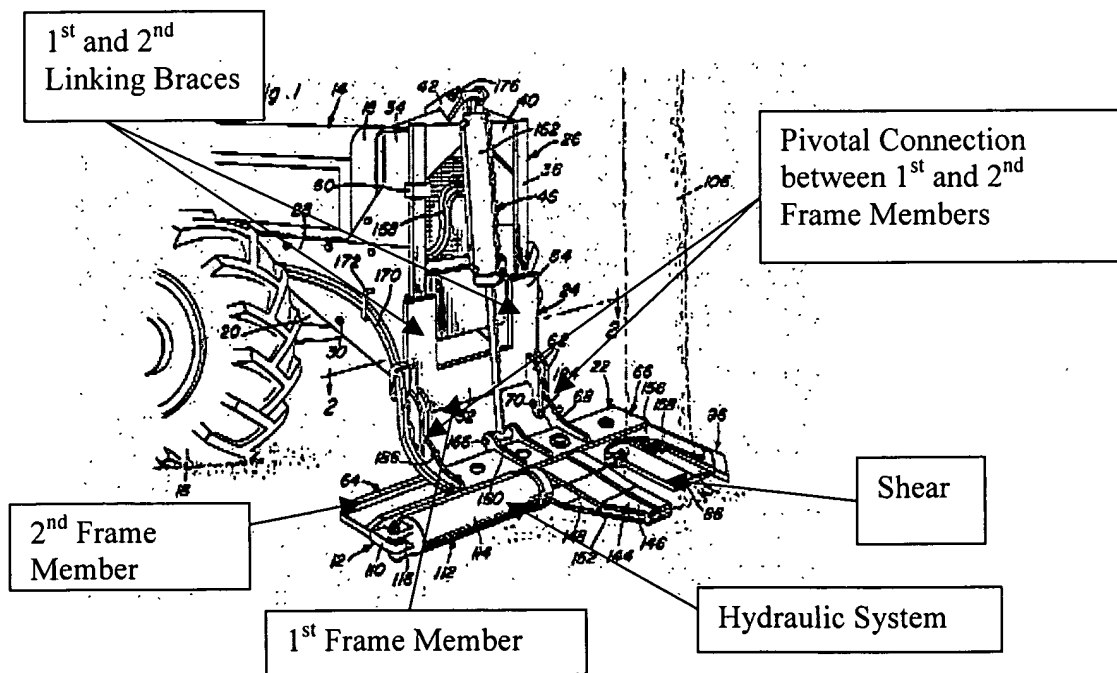
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 as best as can be understood is rejected under 35 U.S.C. 102(b) as being anticipated by White (3,913,641). White discloses a shear for mounting to an all terrain vehicle

Art Unit: 3725

comprising a frame (fig. 1), the frame comprising a first frame member comprising a single non-pivoting stanchion (52) for connection to the vehicle (fig. 1); and a second frame member comprising a single metal (col. 9, lines 30-34) tube (66; 72, 74) pivotally connected (70, 166; figs. 1, 9) to the first frame member, the second frame member (66) being transverse the first frame member (fig. 1) and being pivotal only in "*the horizontal direction*" (fig. 1, 9); a shear (86, 94, 108) attached to the second frame (66; fig. 1); and a hydraulic system (170, 172, 46, 112) attached to the shear, the hydraulic system being mounted to the all-terrain vehicle (Examiner notes the hydraulic hoses 170, 182 extending from the cylinder 112 to the vehicle).

As to the recitation of a "*shear*", Examiner notes the sharp edge (94) of the blade (86) working in conjunction with the anvil (108) of the blade assembly (22) serve to shear a tree/vegetation, thus disclosing a "*shear*".



Art Unit: 3725

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 14-16 as best as can be understood are rejected under 35 U.S.C. 102(e) as being anticipated by Ramun (6,994,284). Ramun discloses an all terrain vehicle containing a shear system comprising a beam (20) attached to the vehicle (Abstract, Examiner notes demolition equipment to include a vehicle/backhoe ), the beam extending from the vehicle; and a shear (fig. 3) attached to the beam, the shear comprising a first shear blade member (12) having a proximal end and a distal end (fig. 3), with a blade (190) located adjacent the distal end (fig. 3) ; a second shear blade member (14) having a proximal end and a distal end (fig. 3 ), with a blade (190) located adjacent the distal end (fig. 3), the second shear blade member being movable relative to the first shear blade member to cut an object placed between respective blades of the first and second shear blade members; a first linking member (24) having a first end pivotally fastened (26) to the proximal end of the first blade member (12); a second linking member (28) having a first end pivotally fastened (30) to the proximal end of the second blade member (14); the first and second linking members pivotally connected (fig. 3) about a common pivot point (34); and wherein the shear is connected to the beam and not directly connected to the all terrain vehicle (fig. 1-3).

With regard to claim 15, Ramun discloses a support member (38).

With regard to claim 16, Ramun discloses the support member is a first hydraulic cylinder (38; col. 6, lines).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 as best as can be understood is rejected under 35 U.S.C. 103(a) as being unpatentable over White (3,913,641) in view of Emery (5,174, 098). White does not explicitly disclose a power source separate than that which powers the vehicle, a hydraulic pump or control system.

Emery teaches in a similar art a vehicle apparatus for cutting/severing vegetation/tree. Emery teaches the use of plural power sources (col. 3, lines 14-15). Emery teaches a power source to power the vehicle and a second power source (30, 64) to power the shear/cutting means for cutting vegetation (col. 3, lines 15-20). Additionally, Emery teaches the secondary power source (30) to be directly connected to a hydraulic pump (122, 124) for supplying hydraulic fluid via hydraulic lines (130, 132, 134) to the cutting/severing apparatus (col. 4, lines 5-17). Further Emery teaches a control system having valves and switches for controlling the hydraulic system (col. 4, lines 33-67 to col. 5, lines 1-67). Emery teaches that the use of a single power source to power a vehicle and a cutting apparatus may result in reduced or less than a predetermined amount of power supplied to the cutting assembly (col. 1, lines 49-53). Therefore, Emery teaches the use of separate power sources for powering the vehicle and the cutting assembly so as to deliver a predetermined amount of power to a cutting means (col. 2, lines 11-13) so as to efficiently cut/sever object/tree. Because the references are from a similar art and deal with a

Art Unit: 3725

similar problem, (i.e. powering a vehicle and an associated means for cutting) it would have been obvious at the time of the invention to one having ordinary skill in the art to construct White having a secondary, separate power source and hydraulic pump so as to supply a predetermined amount of power to the means for cutting for efficiently cutting/severing an object/tree as taught by Emery.

Claim 3, 4, 12 and 13 as best as can be understood are rejected under 35 U.S.C. 103(a) as being unpatentable over White (3,913,641) in view of (Ramun (6,994,284). With regard to claims 3 and 4, as noted above with regard to claim 1, White discloses a first and second frame member, means for actuating/cylinder (112) and a shear. White does not disclose first and second blade members and blades attached to each of the first and second blade members at the distal end of the blade members or first and second linking members.

Ramun teaches in a similar art, a shearing mechanism attachable to a vehicle/demolition tool wherein the shear mechanism includes a first shear blade member (12) having a proximal end and a distal end (fig. 3), with a blade (190) located adjacent the distal end (fig. 3); a second shear blade member (14) having a proximal end and a distal end (fig. 3), with a blade (190) located adjacent the distal end (fig. 3), the second shear blade member being movable relative to the first shear blade member to cut an object placed between respective blades of the first and second shear blade members; a first linking member (24) having a first end pivotally fastened (26) to the proximal end of the first blade member (12); a second linking member (28) having a first end pivotally fastened (30) to the proximal end of the second blade member (14); the first and second linking members pivotally connected (fig. 3), a hydraulic system and a hydraulic cylinder (36, 38) attached to the linking members, wherein the shear (10) is actuated via a

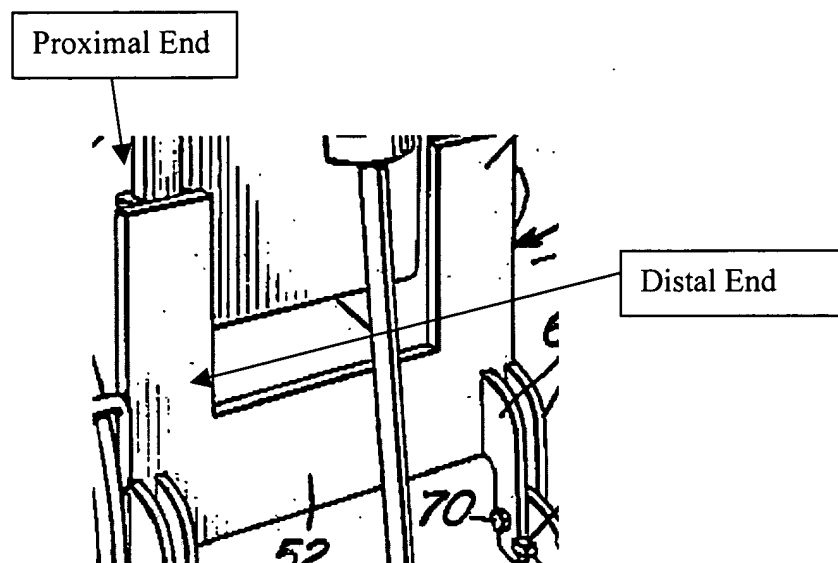
Art Unit: 3725

hydraulic cylinder (36, 38) to cut an object between the blades (190) of the first and second blade members (12, 14; fig. 3). Ramun teaches this construction so as to efficiently shear a material between the blades (190) of the first and second blade members (12, 14; fig. 3).

Because the references are from a similar art and deal with a similar problem (i.e., hydraulically driven/actuated shearing blades for shearing an object between the blades), it would have been obvious at the time of the invention to one having ordinary skill in the art to replace, White's shearing construction with a shearing construction having a first and second blade member, blades attached to the distal end of each blade member and first and second linking members pivotally attached to the proximal end of each blade member so as to provide enough force to efficiently shear an object between the blades of the first and second blade members as taught by Ramun.

With regard to claim 12, as best as can be understood, White discloses the first frame member pivotally connects to the second frame member (fig. 1, 3).

With regard to claim 13, as best as can be understood, White discloses wherein the first frame member (52) is attached to a front grill of the vehicle (fig. 1) with a first linking brace and a second linking brace (Examiner notes the upward legs of the support 52 to be linking braces), the first linking brace and second linking brace each having a proximal and distal end, wherein the proximal end of the first linking brace is fastened to the first frame member and the distal end of the first linking brace is fastened to the front grill, and wherein the proximal end of the second linking brace is fastened to the first frame member and the distal end of the second linking brace is fastened to the front grill.



Claims 17 and 18 as best as can be understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramun (6,994,284) in view of Emery (5,174, 098). Ramun does not disclose a hydraulic system attached to the shear, wherein the hydraulic system comprises *a power source separate than that which powers the vehicle/demolition equipment*. As noted above, with regard to claim 2, Emery discloses a separate/dedicated power source attached to the shear/means for cutting. It would have been obvious at the time of the invention to one having ordinary skill in the art to construct Ramun having a separate power so as to supply a predetermined amount of power to the means for cutting for efficiently cutting/severing an object as taught by Emery.

With regard to claim 18 as best as can be understood, Ramun discloses a hydraulic cylinder (36, 28) in communication with a hydraulic system wherein a first end of the cylinder is attached to the beam (20) and a second end of the cylinder is attached to the first and second linking members at the common pivot point (34; fig. 43).

Claims 5-8 as best as can be understood are rejected under 35 U.S.C. 103(a) as being unpatentable over White (3,913,641) in view of (Ramun (6,994,284) as applied to claim 3 above, and further in view of Emery (5,174,098). With regard to claim 5, as noted above with reference to claim 2, White does not disclose a separate power source, hydraulic pump and control system. For the reasons noted above regarding claim 2, it would have been obvious at the time of the invention to one having ordinary skill in the art to construct White having a secondary, separate power source and hydraulic pump so as to supply a predetermined amount of power to the means for cutting for efficiently cutting/severing an object/tree as taught by Emery.

With regard to claim 6, White discloses valves (col. 9, lines 15-18).

With regard to claim 7, White discloses the first and second frame members connected by a support member (46; 62, 68).

With regard to claim 8, White discloses wherein the supporting member comprises a second hydraulic cylinder (46) having a proximal end and a distal end, wherein the proximal end of the second hydraulic cylinder (46) attaches to the first frame member (via the guide system 36) and the distal end of the second hydraulic cylinder is attached to the second frame member (66; fig. 1), and wherein the second hydraulic cylinder connects to the hydraulic system.

As to the recitation “...*proximal end of the second hydraulic cylinder attaches to the first frame member*”, Examiner notes the claim does not state the second cylinder to be directly attached/coupled/connected to the first frame member and therefore does not prohibit any intermediary structure. Accordingly as best as can be understood, White discloses the claimed invention as set forth in claim 8.

***Response to Arguments***

Applicant's arguments filed August 8, 2006 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Due to the new grounds of rejection with regard to claims 3-8, 12 and 13 that were not necessitated by the amendment, this Office Action is made non-Final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SSelf  
October 16, 2006